

1 HONORABLE RICARDO S. MARTINEZ
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 LISA HOOPER, BRANDIE OSBORNE,
16 KAYLA WILLIS, REAVY WASHINGTON,
17 individually and on behalf of a class of
18 similarly situated individuals; THE
19 EPISCOPAL DIOCESE OF OLYMPIA;
20 TRINITY PARISH OF SEATTLE; REAL
21 CHANGE,

Plaintiffs,

22 v.
23
24 CITY OF SEATTLE, WASHINGTON;
25 WASHINGTON STATE DEPARTMENT OF
26 TRANSPORTATION; ROGER MILLAR,
27 Secretary of Transportation for WSDOT, in his
official capacity,

Defendants.

No. 2:17-cv-00077-RSM

CITY OF SEATTLE'S MOTION FOR
CONVERSION OF PRELIMINARY
INJUNCTION RULING INTO FINAL
JUDGMENT ON THE MERITS

Hearing date: 3/27/2020
Without Oral Argument

22 I. INTRODUCTION

23 The claims raised in this case are ripe for final adjudication. This Court previously ruled
24 that Plaintiffs failed to justify class certification or injunctive relief regarding the encampment
25 rules and practices of Defendant the City of Seattle (the "City" or "Seattle"). The Ninth Circuit
26 affirmed the denial of class certification, meaning the claims in this case are limited to the named
27

SEATTLE'S MOTION FOR CONVERSION TO FINAL
JUDGMENT - 1

Case No. 2:17-cv-00077-RSM

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1 Plaintiffs before the Court. In granting Plaintiffs a stay pending interlocutory appeal on class
 2 certification, the Court also reasoned that further discovery, if any, would be limited to those
 3 specific Plaintiffs. On remand, Plaintiffs' counsel now report they are unable to reach some or all
 4 of the named Plaintiffs, and are planning to move for dismissal. In light of the robust record and
 5 thorough briefing that has already been developed, including as to the named Plaintiffs in
 6 particular; the detailed rulings this Court already made explaining that Plaintiffs were unlikely to
 7 prevail on the merits of their constitutional claims; the disclosure that at least some Plaintiffs are
 8 out of touch with counsel and Plaintiffs' expressed intent to seek dismissal; and the threat of
 9 duplicative litigation against the City—including the actual filing of another lawsuit by Plaintiffs'
 10 counsel in state court raising the same issues on behalf of three other unhoused persons—the Court
 11 should convert its preliminary injunction ruling into a final judgment on the merits. The City
 12 respectfully requests such relief to prevent circumvention of the Court's rulings, avoid undue
 13 prejudice, and bring this fully litigated case to a proper end.

16 II. PROCEDURAL HISTORY

17 A. Plaintiffs obtained expansive discovery but failed to corroborate their allegations of 18 wrongdoing with evidence of any unlawful Seattle policies or practices.

19 This Court has already addressed in detail the legal issues and factual record developed in
 20 this case. *See* Dkt. ## 65, 209, 221 (orders). Plaintiffs brought federal and state constitutional
 21 claims against Seattle for allegedly destroying personal property at unauthorized encampments.
 22 *See* Dkt. # 73 at 48-49. The suit was originally conceived as a “vehicle” for putting “pressure” on
 23 the City to take legislative and administrative action responsive to the broad demands of Plaintiffs
 24 and their counsel the American Civil Liberties Union (“ACLU”). *See* Dkt. 180-1, Ex. G. at 40:5-
 25 43:16 (explaining underlying thinking that “the higher the stakes, the more eager [the City will be]
 26

1 to settle"); Ex. H at 1. In response, the City has asserted a counterclaim for a declaration that its
 2 encampment policies and practices are lawful. *See Dkt. # 75 at 31-32.*

3 On February 14, 2017, the Court denied Plaintiffs' motion for a temporary restraining order
 4 because the record indicated Seattle was implementing its encampment rules "consistent with the
 5 procedural protections built into them." Dkt. # 65 at 14. The City then responded to Plaintiffs'
 6 extensive discovery requests over the course of seven months, producing 65,000 documents in 21
 7 productions comprising over 225,000 pages; providing staff members for detailed depositions; and
 8 facilitating a site visit of the City's storage facility. *See Dkt. # 218 at 2-3.*

9
 10 On October 4, 2017, the Court denied Plaintiffs' motions for class certification and a
 11 preliminary injunction, deeming Seattle's encampment rules facially valid and finding that
 12 Plaintiffs failed to establish any unlawful policies or practices. *See Dkt. # 209 at 9-16, 17-31.* The
 13 Court observed that Plaintiffs had all "acknowledged receipt of constitutionally adequate notice"
 14 but had failed "to act upon the notice given," and most refused to have their items stored by the
 15 City. *Id.* at 13-14. More broadly, the Court found that Plaintiffs had failed to establish any "pattern
 16 of unconstitutional conduct" and noted that it was "troubled" by counsel's misrepresentations of
 17 statistical data and other evidence obtained in discovery. *See id.* at 29-30.
 18

19 **B. Plaintiffs sought and obtained a stay of proceedings to appeal class certification.**
 20

21 Plaintiffs petitioned the Ninth Circuit Court of Appeals for interlocutory review of the
 22 Court's class certification ruling, but not its denial of injunctive relief. *See Dkt. # 210 at 1.*
 23 Plaintiffs then moved for a stay of proceedings before this Court pending appeal, which this Court
 24 granted on December 20, 2017. *See Dkt. # 221.* The Court expressly reasoned that a stay was
 25 warranted because the final resolution of class certification would determine whether or not
 26 Plaintiffs would "be limited to seeking and using discovery material specific to the named,
 27

1 individual Plaintiffs.” Dkt. # 221 at 2. Plaintiffs pursued their petition, and the Ninth Circuit
 2 granted review on January 23, 2018. *See* Dkt. # 222. The Ninth Circuit ultimately heard oral
 3 argument on February 4, 2019. *See* Decl. of Taki V. Flevaris in Supp. Mot. for Conversion
 4 (“Flevaris Decl.”) at ¶ 2.

5 **C. Plaintiffs’ counsel then filed an overlapping lawsuit in state court challenging the
 6 City’s practices and seeking another round of expansive discovery.**

7 On October 1, 2019, while Plaintiffs’ interlocutory appeal remained pending and these
 8 proceedings remained stayed, the ACLU, through some of the same attorneys representing
 9 Plaintiffs in this case, filed another lawsuit against Seattle in state court on behalf of three other
 10 unhoused persons and a hair salon. Flevaris Decl. at ¶ 3 & Ex. A at 4, 30 (Compl., *Kitcheon v.*
 11 *Seattle*, No. 19-2-25729-6 SEA (King Cnty. Super. Ct.)). That complaint asserts an identical core
 12 claim under Article I, Section 7 of the Washington Constitution over the disposition of property at
 13 encampments—as here—with added state law claims for cruel punishment and conversion. *See*
 14 *id.*, Ex. A at 27-29. The case seeks declaratory relief concerning the legality of Seattle’s conduct
 15 related to unauthorized encampments. *Id.*

17 The same day counsel filed the *Kitcheon* complaint, they served another set of broad
 18 discovery requests on the City. *See* Flevaris Decl. at ¶ 4 & Ex. B. These requests covered mostly
 19 the same issues as in this case, seeking any and all documents related to (1) the City’s encampment
 20 policies and trainings, (2) the City’s Navigation Team, (3) each and every encampment removal
 21 the City conducted over multiple prior years, and (4) any related communications, whether
 22 internally or with third parties. *See id.* (Requests 4-21, 25-32). The case remains pending. *Id.*

24 **D. The Ninth Circuit affirmed based on the failure to prove any unlawful conduct.**

25 On November 29, 2019, the Ninth Circuit affirmed this Court’s class certification ruling.
 26 *See* Dkt. # 224. The Ninth Circuit held that Plaintiffs had “failed to proffer sufficient evidence”
 27

1 of any Seattle practice that would justify class litigation or even to “articulate” such a practice.
 2 Dkt. # 224 at 7.

3 This Court’s deputies eventually emailed all counsel on January 27, 2020, requesting a
 4 status report by January 31. *See* Flevaris Decl., Ex. C. Counsel jointly requested an additional
 5 two weeks to confer about next steps, which the Court allowed. *See id.*

6 **E. Plaintiffs’ counsel have been unable to contact their clients and plan to seek
 7 dismissal.**

8 On February 14, 2020, counsel jointly informed the Court of the respective positions of the
 9 parties. *See id.* Plaintiffs’ counsel reported that they “have been attempting to contact the
 10 individual Plaintiffs but have not been able to reach all of them,” requested “additional time” for
 11 this purpose, and indicated that “they will be moving to dismiss this case.” *Id.* On the other hand,
 12 the City’s stated position is that “the case is ready for final judgment” and that the Court’s
 13 preliminary injunction ruling should be converted “into a final decision on the merits of the case.”
 14 *Id.* The City now moves for such relief.

15 **III. STANDARD OF REVIEW**

16 A district court may convert its ruling on a preliminary injunction motion into a “final
 17 adjudication on the merits . . . so long as the procedures do not result in prejudice to either party.”
 18 *Glacier Park Found’n v. Watt*, 663 F.2d 882, 886 (9th Cir. 1981) (citing Fed. R. Civ. Pro. 65(a)(2));
 19 *see also Air Line Pilots Ass’n, Int’l v. Alaska Airlines, Inc.*, 898 F.2d 1393, 1397 (9th Cir. 1990)
 20 (noting ruling can be converted at any time if the parties have been afforded a “full opportunity to
 21 present their respective cases” (internal quotes omitted)). Such a conversion is the functional
 22 equivalent of granting summary judgment “on the basis of the factual record available at the
 23 preliminary injunction stage.” *Air Line Pilots*, 898 F.2d at 1397 n.4. In such circumstances, final
 24 judgment is proper if the non-moving party has been given notice and an opportunity to object,
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1 and the proper result is apparent from the record. *Id.* at 1397 & n.4; *see also, e.g., D. Patrick, Inc.*
 2 *v. Ford Motor Co.*, 8 F.3d 455, 458-59 (7th Cir. 1993) (affirming conversion after preliminary
 3 injunction proceedings where district court “acted reasonably in cutting to the chase”).
 4

IV. ARGUMENT FOR CONVERSION

5 This Court should convert its preliminary injunction ruling into a final order granting
 6 summary judgment to the City on the merits of all claims in this case. Plaintiffs have been given
 7 notice of the instant motion. After extensive discovery, the record has been fully developed as to
 8 the Plaintiffs and their specific claims, and Plaintiffs are seemingly not planning to litigate this
 9 case any further. As reflected in the Court’s prior ruling, contrary to the sweeping allegations in
 10 their complaint, the Plaintiffs admitted to receiving adequate notice to remove their belongings,
 11 have failed to establish any pattern of unlawful City conduct, and now plan to dismiss this case
 12 rather than attempt to raise any new evidence or issues that might justify further proceedings. In
 13 such circumstances, and especially given the Court’s prior rulings, the significant resources the
 14 parties have already devoted to this litigation, and the threat of duplicative litigation—with another
 15 lawsuit already filed in different tribunal—Plaintiffs should not be allowed to simply discard this
 16 case through a summary, nondescript dismissal. Instead, the City respectfully requests that the
 17 Court convert its prior substantive rulings into a final judgment on the merits denying all Plaintiffs’
 18 claims and granting the City’s counterclaim for declaratory relief.
 19

20 **A. Plaintiffs have been provided adequate notice of conversion and an opportunity to
 21 be heard.**

22 A preliminary injunction ruling may be converted into a final judgment on the merits once
 23 the adverse party has been given notice and a meaningful opportunity to object. *See Glacier Park,*
 24 663 F.2d at 886; *Air Line*, 898 F.2d at 1397 & n.4. Here, Plaintiffs have been notified and provided
 25 an opportunity to object in accordance with the Court’s summary judgment procedures. *See infra,*
 26
 27

1 Cert. of Serv.; LCR 7(d)(3). This is sufficient to allow conversion of the Court's prior ruling into
 2 a final decision on the merits.

3 **B. The record has been adequately developed to support a substantive final decision on
 4 the merits of all claims.**

5 The factual record has been more than adequately developed in this case to support final
 6 judgment on the merits of all the Plaintiffs' claims and the City's counterclaim. Leading up to the
 7 preliminary injunction hearing, the parties engaged in expansive discovery over a period of many
 8 months. *See* Dkt. # 218 at 2-3. The City produced over 225,000 pages of documentation and
 9 facilitated multiple depositions and a site visit. *See id.* The City in turn deposed each of the named
 10 Plaintiffs and one of their agents. *See id.* Plaintiffs do not intend to develop the record any further,
 11 nor could they justify delaying final judgment regardless. *See* Flevaris Decl., Ex. C.

13 Although the named Plaintiffs initially leveled broad accusations against the City, the
 14 record has revealed they suffered no unlawful deprivations of property and cannot make out a valid
 15 claim for relief. All the unhoused Plaintiffs admitted to receiving but disregarding notices, and
 16 conceded that they lost property in extenuating circumstances, such as accidentally leaving items
 17 behind as garbage and refusing storage. *See* Dkt. # 132 at 8-11 (discussing deposition testimony).
 18 Likewise, the organizational Plaintiffs have not suffered any property deprivation themselves, have
 19 no valid legal claims of their own, and are involved in large part to pressure the City. *See* Dkt. #
 20 171 at 13-14 (same). In sum, the Plaintiffs have failed to establish any basis for their claims.
 21

22 Based on the record that was developed from all the expansive discovery conducted in this
 23 case, including dozens of factual declarations, this Court properly denied Plaintiffs' request for
 24 injunctive relief. *See* Dkt. # 209 at 16-34. The Court found that Seattle's encampment policies
 25 are facially valid—a ruling not based on any disputed facts—and that Plaintiffs failed to produce
 26 evidence of any unlawful Seattle policy or practice, *see id.*, especially as applied to their own
 27

1 circumstances given that they admitted receiving sufficient notice but failing to act and that most
 2 of them refused to accept storage of items with the City, *see id.* at 13-14. These rulings are
 3 sufficient to resolve this entire case, both to deny Plaintiffs' unsupported claims for relief and to
 4 grant the City's counterclaim for a declaratory judgment in its favor against the Plaintiffs. *See*
 5 Dkt. # 73 at 48-50; Dkt. # 75 at 31-33.
 6

7 **C. Plaintiffs should not be allowed to circumvent this Court's rulings through
 8 summary dismissal, which would prejudice the City.**

9 Conversion of the Court's prior detailed order into a final judgment on the merits is
 10 warranted in this instance not only based on the developed record, and the detailed rulings the
 11 Court has already made, but also based on the equities presented. In particular, conversion is
 12 warranted here given (1) the Court's prior rulings adverse to the Plaintiffs; (2) the significant
 13 resources that all parties and the Court have already expended litigating this suit; and (3) the public
 14 nature of the claims at issue and threat of duplicative litigation, which has already been realized.
 15 Each of these factors supports a substantive final decision on the merits through conversion here.
 16

17 First, Plaintiffs appear to be abandoning this case only after receiving adverse rulings from
 18 this Court and the Ninth Circuit regarding the merits of their claims, or lack thereof. When a
 19 plaintiff appears to be evading adverse rulings, a substantive final decision on the merits is
 20 warranted in lieu of summary dismissal. *See, e.g., Terrovona v. Kincheloe*, 852 F.2d 424, 429 (9th
 21 Cir. 1988) (holding that refusal to grant voluntary dismissal was "reasonable" because magistrate
 22 judge had already issued adverse rulings); *Radiant Tech. Corp. v. Electrovert USA Corp.*, 122
 23 F.R.D. 201, 203-04 (N.D. Tex. 1988) (noting that "[o]utright dismissal should be refused" when
 24 "a plaintiff seeks to circumvent an expected adverse result").
 25

26 Second, all parties and the Court have already expended significant resources litigating this
 27 case, including through wide-ranging briefing, multiple hearings, and by responding in great detail

1 to Plaintiffs' expansive discovery requests. *See* Dkt. # 218 at 2-3; # 209 at 29-30; ## 58, 196. This
 2 includes substantial cost to the City for responding to discovery, in addition to an untold drain on
 3 staff time, resources, and operations over a period of many months. *See* Flevaris Decl. at ¶ 6. At
 4 such a late stage, after the defendant has devoted significant resources to litigating the case, a
 5 substantive ruling on the merits of the litigated claims is appropriate rather than a summary
 6 dismissal. *See, e.g.*, *Davis v. Huskipower Outdoor Equipmt. Corp.*, 936 F.2d 193, 199 (5th Cir.
 7 1991) (noting plaintiffs may be precluded from abandoning case "after the defendant has exerted
 8 significant time and effort").

10 Third, the claims presented are public in nature and there is a significant threat of
 11 overlapping litigation in another tribunal—a threat that has already been realized—making a
 12 substantive final ruling especially important to the City, including with regard to its own
 13 declaratory judgment claim. When the claims at issue are inherently public or there is otherwise
 14 a threat of duplicative litigation, the defendant may be prejudiced absent a substantive final
 15 decision adjudicating the merits. *See, e.g.*, *Radiant*, 122 F.R.D. at 203-04 (noting that the "nature
 16 of a plaintiff's claims may be such that, if the defendant is not afforded the opportunity for
 17 vindication on the merits in this forum, it will incur legal prejudice . . . due to the public profile of
 18 the defendant" and "the potential for parallel litigation"). Here, the City is entitled to a substantive
 19 final ruling on the merits, with all the persuasive and preclusive weight such a ruling entails in
 20 future litigation. Given that Plaintiffs' counsel have already filed another lawsuit in a different
 21 court on substantially the same issues, this factor carries even greater weight here than it would
 22 otherwise.

V. CONCLUSION

The claims of Plaintiffs and the City should all be adjudicated through a substantive final decision on the merits. Based on the comprehensive record that has been developed, and the Court's detailed prior rulings, including with regard to the Plaintiffs in particular, the Court should now exercise its discretion to convert its prior preliminary injunction order into a final decision on the merits. This would prevent Plaintiffs from circumventing the Court's rulings and would provide the City with the vindication it deserves after significant time and expense defending this lawsuit on behalf of the public. For these reasons, the City respectfully requests that the Court grant the requested conversion and resolve this lawsuit through a final decision dismissing all of Plaintiffs' claims with prejudice and granting the City's counterclaim for a declaration that the City's encampment policies and practices are valid facially and as applied to the Plaintiffs.

DATED this 5th day of March, 2020.

PACIFICA LAW GROUP LLP

By s/ Matthew J. Segal
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SEATTLE CITY ATTORNEY'S OFFICE

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Co-Counsel for Defendant City of Seattle

CERTIFICATE OF SERVICE

I hereby certify that on this 05th day of March, 2020, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to all counsel of record.

Dated this 05th day of March, 2020.

s/ Thien Tran
Thien Duc Tran